

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-1182

COMMONWEALTH

vs.

NICOLE JOHNSON.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

Nicole Johnson, the defendant, appeals from her conviction in the Boston Municipal Court of forgery of an insurance "complaint"<sup>1</sup> under G. L. c. 267, § 1. The defendant argues for the first time on appeal that the Boston Municipal Court lacked jurisdiction over the charge.<sup>2</sup> The Commonwealth concedes the issue, and upon independent review, we agree and vacate the defendant's conviction.

Discussion. "[A] jurisdictional claim can be raised at any time, including on appeal." Commonwealth v. Zammuto, 89 Mass. App. Ct. 80, 84 (2016). We review jurisdictional questions de

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<sup>1</sup> Reference is also made to the complaint as a certificate.

<sup>2</sup> The defendant also argues that a certain telephone call was inadmissible hearsay because the Commonwealth failed to authenticate the defendant's participation on the call. In light of our disposition of the case, we do not address this issue.

novo. See Merchants Ins. Group v. Spicer, 88 Mass. App. Ct. 262, 266 (2015). Here, the dispositive question presented is whether the Boston Municipal Court has jurisdiction over forgery of an insurance certificate (or complaint) under G. L. c. 267, § 1. We conclude that it does not.

The Boston Municipal Court's jurisdiction is defined by G. L. c. 218, § 26. The statute explicitly grants the Boston Municipal Court jurisdiction over, amongst other misdemeanors and felonies, "forgery of a promissory note, or of an order for money or other property . . . ." G. L. c. 218, § 26 (2018). In Della Jacova v. Widett, 355 Mass. 266, 273-274 (1969), the Supreme Judicial Court held that the jurisdictional statute "[did] not apply to" a forgery charge under G. L. c. 267, § 1, for the forgery of "a record of entry" to a safety deposit box card. Della Jacova, supra. The defendant's situation is directly analogous, as the "insurance complaint" in the defendant's charging documents is not a promissory note, nor is it an order for money or other property.<sup>3</sup> As in Della Jacova,

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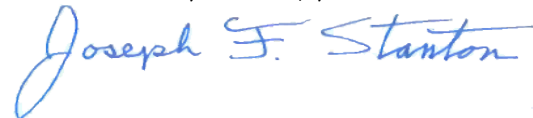
<sup>3</sup> We agree with the Commonwealth that the fact that the judge instructed the jury on common law forgery, and not forgery under G. L. c. 267, § 1, does not affect our analysis. "[N]o principle by which a verdict or finding supported by the evidence but rendered by a court lacking capability to try that offense, may be transmuted into a verdict or finding on a lesser offense solely because the court had jurisdiction over the lesser offense." Ariel A. v. Commonwealth, 420 Mass. 281, 287 (1995).

the penalty set forth in the complaint here (State prison for not more than ten years) also exceeds the Boston Municipal Court's jurisdiction. See G. L. c. 218, § 26. Because "a trial in a lower court on a charge over which that court does not have jurisdiction is a nullity," Commonwealth v. Zawatsky, 41 Mass. App. Ct. 392, 397 n.6 (1996), we vacate the defendant's conviction and set aside the verdict.

Judgment vacated.

Verdict set aside.

By the Court (Blake, Kinder &  
Desmond, JJ.<sup>4</sup>),



Clerk

Entered: June 27, 2019.

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<sup>4</sup> The panelists are listed in order of seniority.